

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1601

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H. P. 1226

House of Representatives, March 26, 1973

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. McTeague of Brunswick.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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AN ACT Relating to Psychotherapist and Patient Privilege.

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Be it enacted by the People of the State of Maine, as follows:

**R. S., T. 16, § 60, additional.** Title 16 of the Revised Statutes is amended by adding a new section 60, to read as follows:

**§ 60. Definitions**

As used in this section, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Confidential.** A communication is "confidential" if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the psychotherapist, including members of the patient's family.

2. **Patient.** A "patient" is a person who consults or is examined or interviewed by a psychotherapist.

3. **Psychotherapist.** A "psychotherapist" is a person authorized to practice medicine in the State, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including drug addiction, or a person licensed or certified as a psychologist under the laws of this State, while similarly engaged, or a person licensed as a social worker in this State or a person licensed as a psychiatrist in this State.

4. **General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purposes of diagnosis or treatment of his mental or emotional condition, including drug addiction, among himself, his psychotherapist or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient's family.

5. **Who may claim the privilege.** The privilege may be claimed by the patient, by his guardian or conservator, or by the personal representative of a deceased patient. The person who was the psychotherapist may claim the privilege but only on behalf of the patient. His authority so to do is presumed in the absence of evidence to the contrary.

6. **Exceptions.**

A. **Proceedings for hospitalization.** There is no privilege under this rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization.

B. **Examination by order of judge.** If the judge orders an examination of the mental or emotional condition of the patient, communications made in the course thereof are not privileged under this rule with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

C. **Condition an element of claim or defense.** There is no privilege under this rule as to communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense, or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense.

## STATEMENT OF FACT

Confidential communication is an important aspect of protecting people who by nature of their needs confide in psychotherapists. Provisions for confidentiality also serve as a basis for protecting the professional person who should not have to violate the trust which is the mainstay of a close therapeutic interpersonal relationship and the profession of a psychotherapist feels strongly about this aspect of service delivery.